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EXAMINER

BASS, DIRK R

ART UNIT

PAPER NUMBER

1777

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DELIVERY MODE

07/20/2011

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

DETAILED ACTION

Applicant's response filed June 8, 2011 is acknowledged. Claims 1 and 19 are amended. Claims 1 and 4-20 are pending and further considered on the merits.

Response to Amendment

In response to applicant's amendments, the examiner maintains the grounds of rejection set forth in the office action dated March 8, 2011.

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. **Claims 1, and 4-20** are rejected under 35 U.S.C. 102(b) as being anticipated by Ellingboe et al., USPA 2002/0085952 (Ellingboe, IDS).

3. Regarding claims 1, 16, and 19-20, Ellingboe discloses a blood treatment unit (abstract, fig. 1) comprising:

- a. A blood treatment device that is part of an extracorporeal blood circulatory system (REF 118);
- b. Actuators in at least one of the extracorporeal blood circulatory system and another fluid circulatory system (REF 31-36);
- c. A control unit for controlling the actuators (REF 10);
- d. A display and input unit including a touch screen connected to the control unit (REF 50/54);

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- e. Wherein the display and input unit include a plurality of mode means (REF 242) that show various time modes of a blood treatment on the touch screen, the mode means being selectable by an operator via the touch screen and arranged with respect to one another in order of their occurrence in time, and including at least one blood treatment preparation means, one blood treatment means, and one blood treatment after-preparation means, said mode means being permanently visible in all views (fig. 30A, ¶ 0257); and
 - f. The control unit being configured to identify the running time mode and to instruct the display and input unit to show the mode means selected from the other mode means using different symbols and establishes the end of one time mode and automatically initiates the beginning of the next and communicates this to the display and input unit, changing the representation of the selected mode means (¶ 0250, 0257-0258).
4. Regarding claims 4-6 and 17, Ellingboe discloses a device wherein the blood treatment means on the touch screen has a larger area than the blood treatment preparation means or blood treatment after-preparation means, said mode means is represented by a cell at one edge of the touch screen, and the remaining area represents further input and/or output means depending on the time mode (¶ 0250, 0257-0258).
5. Regarding claim 7, Ellingboe discloses a device wherein the blood treatment unit is a hemodialysis device (¶ 0023-0024).

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6. Regarding claims 8 and 18, Ellingboe discloses a device wherein the blood treatment preparation means includes mode means for a blood system mode and a preparation mode (§ 0257).

7. Regarding claims 9 and 18, Ellingboe discloses a device wherein the blood after preparation means includes mode means for a reinfusion mode and a purification mode (§ 0257).

8. Regarding claim 10, Ellingboe discloses a device wherein the control unit instructs the display and input unit to represent individual mode means in a different type of symbol according to the time mode and to deactivate an input function associated therewith (§ 0258).

9. Regarding claim 11, Ellingboe discloses a device wherein the display and input unit displays the mode means in all of the time modes at a same point of the touch screen (REF 242, fig. 30A, § 0257).

10. Regarding claims 12-14, Ellingboe discloses a device further comprising blood detectors and air detectors, and the control unit evaluates the values of the sensors to determine the end of a time mode and the presence of correctly mounted components (§ 0083, 0367, fig. 33).

11. Regarding claim 15, Ellingboe discloses that the control unit determines the quantity of fluid conveyed by a controlled pump to determine the end of a time mode (§ 0434).

Response to Arguments

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12. Applicant argues that the prior art does not disclose a plurality of mode means including at least one blood treatment preparation means, one blood treatment means, and one blood treatment after-preparation means. Taking applicant's definition of mode means, i.e. functional elements on the display unit which are selectable to influence operation of a hemodialysis treatment, the examiner maintains that Ellingboe discloses the above described features. Ellingboe discloses a hemodialysis apparatus with a display unit comprising a plurality of mode means, said mode means comprising "User Setup", "Load", "Auto-Prime", "Main", and "Unload". The examiner interprets "User Setup" to anticipate at least one blood treatment preparation means, "Main" which includes bypass and post-bypass operations to anticipate one blood treatment means, and "Unload" to anticipate one blood treatment after-preparation means.

13. Applicant argues that the prior art does not disclose the "automatic initiating" feature described in the claims. In response, the examiner directs applicant's attention to the language of claim 1 in which a control unit is stated to be configured to "establish an end of at least one of the time modes". The remaining elements following this limitation are deemed to be statements with regard to the intended use and are not further limiting in so far as the structure of the product is concerned. In article claims, a claimed intended use must result in a **structural difference** between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. MPEP § 2111.02. Furthermore, Ellingboe discloses that the plurality of mode means follows a sequential order, and that once one mode means is completed, the next is automatically loaded for the user to visualize on the display unit. Therefore,

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the examiner maintains that the prior art discloses a control unit configured to "establish an end of at least one of the time modes" in addition to automatically initiating of a subsequent time mode".

Conclusion

14. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to DIRK BASS whose telephone number is (571)270-7370. The examiner can normally be reached on Mon - Fri (9am-4pm).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Vickie Kim can be reached on (571) 272-0579. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/KRISHNAN S MENON/
Primary Examiner, Art Unit 1777

/DRB/
Dirk R. Bass